

Kondaurov v. Kerdasha

Virginia Supreme Court

September 16, 2005

This case is significant for limiting emotional damages in personal injury cases.

The plaintiff was following a car driven by her boyfriend when the boyfriend began to slow, apparently hearing sirens approaching. The defendant, an employee of the Russian Embassy driving a bus did not slow and hit the plaintiff's vehicle in the rear, forcing it into the car in front, which in turn caused it to go onto its side and into the oncoming lane where it was struck by the oncoming ambulance and turned onto its roof. The plaintiff was left hanging by her seatbelt upside down. Liability was admitted at trial.

The plaintiff suffered very minor physical injuries, just some bruises, for which she was treated in the ER and released. However, before the accident she had significant pre existing conditions including MS, depression and generalized anxiety disorders. These conditions were significantly aggravated by the emotional trauma of the accident. Note that the medical testimony was that the emotional trauma from the accident aggravated the MS and the other conditions, not the physical injuries.

The plaintiff owned a dog, which became very important to her before the accident. There was testimony that the relationship between the plaintiff and the dog was very much like a mother/child relationship. The dog was in the car at the time of the accident and apparently fled from the car through a broken back window with its tail partially cut off. The dog was found and taken to a vet hospital some hours after the accident and suffered some emotional damage.

The plaintiff at trial, without objection, testified as to the close relationship she had with the dog, her great concern when the dog was missing and later found injured, and her concern with the emotional distress the dog suffered from the accident. After the plaintiff rested the defense moved to strike the evidence with respect to anything concerning the dog (except the vet bills, of course). This was denied but renewed at the end of the case, and denied again. The defense then asked for an instruction telling the jury they could not award any damages for the concern the plaintiff felt for the dog. This was denied by the trial court.

The Supreme Court first dealt with the issue of waiver, but stated that the evidence of the window breaking out and the dog escaping did relate to the violence of the accident so its admission was not objectionable at that time, and the defense could wait until later to object. The court noted the key was to give the trial judge an opportunity to correct the problem at trial, and this could have been done in the instructions. The Supreme Court stated that the almost universal rule across the country is that animals, no matter how loved, are personal property and the only damages allowed are the before and after value. Thus the instruction telling the jury they could not award any damages for the emotional concerns that the plaintiff felt for the condition of her dog should have been granted.

More important, the trial court granted an instruction that said that the defendant's were responsible for all the injurious consequences to the plaintiff even though they might not have been reasonably expected to result. In effect this was a thin skulled plaintiff instruction.

The Virginia Supreme Court carefully reviewed the prior law and held that the above instruction is the law with respect to physical injuries, but not emotional injuries. With respect to emotional injuries the defendant is responsible only for those that might have been anticipated to occur to a person of normal sensitivity.

In cases where the plaintiff claims damages arising from emotional distress, and physical injury arising there from, and where there is no proof of willful, wanton, vindictive or outrageous conduct on the defendant's part, the jury should be instructed that the defendant is only responsible for such emotional distress as could reasonably be expected to be sustained by a person of normal sensitivity and normal reactions under the circumstances of the case.

Verdict for the plaintiff for \$300,000 reversed for a new trial.

[Note: the Virginia Supreme Court has recently withdrawn this opinion and has granted a motion to rehear]